

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: HOMETOWN SILVER CREEK LLC AND HOMETOWN FIVE SEASONS DAVENPORT LLC	DOCKET NO. DRU-03-1
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**ORDER GIVING NOTICE AND ESTABLISHING DATES FOR
INTERVENTION AND REPLIES**

(Issued January 7, 2003)

On January 2, 2003, Hometown Silver Creek LLC and Hometown Five Seasons Davenport LLC (Petitioners) filed a petition with the Utilities Board (Board) requesting a declaratory order that Board rule 199 IAC 21.3 is not applicable to the provision of water service by Petitioners to individual residents in the manufactured home communities owned and operated by Petitioners. The petition has been identified as Docket No. DRU-03-1. The petition is filed pursuant to the provisions of Iowa Code § 17A.9 and Board rule 199 IAC 4.1. The specific fact situation on which Petitioners are requesting the declaratory ruling involves the submetering by Petitioners of the homes in the communities that they own. In the alternative, Petitioners request the Board grant a waiver of the rule, if the Board finds the rule applies to Petitioners' operations.

The facts to be considered are:

- 1) Petitioners own and operate two separate manufactured home communities in Davenport, Iowa, with approximately 550 total home sites;
- 2) Iowa-American Water Company (Iowa-American) is a public utility regulated by the Board and provides water service to a master meter at each of the two communities owned by Petitioners;
- 3) Petitioners supply water service to each home site in the two communities from the master meters through water distribution systems constructed, maintained, and operated by Petitioners;
- 4) Petitioners submeter each of the home sites and the individual residents pay Petitioners for the water service. Petitioners charge the individual residents at the same rate as used by Iowa-American for single-family residences.

Rule 199 IAC 21.3 provides general service requirements for regulated water utilities. Paragraph 21.3(1)"b" provides that "[s]eparate premises shall be separately metered and billed. Submetering shall not be permitted." The issue presented by Petitioners is whether this paragraph is applicable to the submetering of water service by Petitioners to the two manufactured home communities.

Petitioners argue that the Board does not have jurisdiction to prohibit submetering and set the rates charged by Petitioners for water service within the two communities. Petitioners contend the Board lacks jurisdiction because (1) the Board's jurisdiction is limited to regulating public utilities and Petitioners are not public utilities, and (2) Iowa Code § 562B, which governs the rights and obligations of

manufactured home community owners and residents, allows a manufactured home community owner to submeter utilities. Petitioners also point out that Iowa Code § 476.1 limits the Board's jurisdiction to public water utilities having 2,000 or more customers.

Rule 199 IAC 4.2 provides that the Board shall, within five days after the filing of the petition, give notice to all persons not served by the petitioner to whom notice is required by law and may give notice to any other persons. Petitioners did not give notice to Iowa-American or the Consumer Advocate Division of the Department of Justice when it filed the petition. The Board will provide notice and a copy of the petition to these two entities.

Iowa Code § 17A.9 requires that the Board take one of four actions within 30 days of the filing of the petition for declaratory ruling and the petition is deemed denied if the Board does not issue a declaratory order within 60 days of the filing of the petition. In order to issue a ruling within the 60 days, the Board will set a schedule for intervention and the filing of responses to the petition. The Board will not address the request for a waiver until it determines whether 199 IAC 21.3 applies to Petitioners' operations.

IT IS THEREFORE ORDERED:

1. A copy of this order and the petition shall be sent to the Consumer Advocate Division of the Department of Justice and Iowa-American Water Company.
2. Petitions to intervene shall be filed on or before January 17, 2003, and shall be in compliance with 199 IAC 4.3. Late filings may be allowed upon a showing

of good cause. The petition to intervene should include all information that the person wishes the Board to consider concerning the questions raised by the petition for declaratory order.

3. Replies to a petition to intervene shall be filed on or before January 24, 2003.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Sharon Mayer
Executive Secretary, Assistant to

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 7th day of January, 2003.